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PREFERRED HEALTH CARE
c/o Fred Torres
Goshen, Indiana

IN THE
COURT OF APPEALS OF INDIANA

GRANGER FAMILY DENTISTRY,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 71A03-0610-CV-465
	)	
PREFERRED HEALTH CARE,	)	
	)	
Appellee.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Richard L. McCormick, Magistrate
Cause No. 71D01-0608-SC-8452

May 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant/Counterclaimant Granger Family Dentistry ("Granger") appeals a decision of the St. Joseph Superior Court, Small Claims Division, awarding Appellee-Plaintiff/Counterclaim Defendant Preferred Health Care ("Preferred Health") a breach of contract judgment for $900.00 and denying Granger's counterclaim for $600.00 restitution. We affirm.

Issue

Granger presents a single issue for review: whether the small claims court decision is contrary to law.

Facts and Procedural History

During 2002, Preferred Health, a sole proprietorship owned by Fred Torres, began to provide employee health care reimbursement services for Granger. On June 1, 2004, Granger entered into a fiscal year contract with Preferred Health, entitled "Employee Reimbursement Plan."[1] It provided in pertinent part as follows:

> [Preferred Health] will
> 1. Set up your account for the [Employee Reimbursement Plan]
> 2. Set up the computer system for your specific account
> 3. Educate the employees with written notification
> 4. Set up all legal documentation, it will be the responsibility of the employer to notify any new employees
> 5. Review all options including present carrier.
>
> It will be the responsibility of the employer to notify Preferred Health Care when they reach their deductible limits. PHC will then monitor and do a follow up report to the health-covered employer and employee every month.

[1] Granger's office manager, Nanette Esler, testified that Granger and Preferred Health began working together in 2002. In addition to the June 1, 2004 contract in the record, there is a second identical contract with the date of May 1 and no calendar year.

> This agreement will remain in force as long as the deductible exceeds $1,000. Preferred Health Care assumes no responsibility or guarantee on deductibles or numbers of deductibles.
>
> With 10 employees, the fee will be $1800.00 = $150.00 per month.

(Plaintiff's Ex. 1.) Granger also adopted a Medical Reimbursement Plan, applicable to full-time employees of Granger.

Granger paid Preferred Health on an annual basis for 2002 through 2005. On June 8, 2006, Granger sent Preferred Health a check for $900.00 and a note that provided as follows:

> Fred,
> Here is ½ of the invoice #364. Due to our current cash flow situation, Dr. Williams is hoping you'll accept $900 down and $900 in 6 months. Thank you for your consideration.
> Nanette

(Plaintiff's Ex. 3.) At some point, Granger changed insurance carriers and assigned the task of monitoring deductibles to internal personnel. On August 1, 2006, Dr. Patrick Williams of Granger issued a letter addressed to Fred Torres, stating in relevant part "we feel your services should be prorated @ $150/month" and requesting reimbursement "of $600.00 for 4 months paid in advance of receiving your service." (Defendant's Ex. 6.)

On August 15, 2006, Preferred Health filed a small claims complaint against Granger, seeking $985.00 and court costs. On September 9, 2006, Granger filed a counterclaim seeking $600.00, courts costs, interest and attorney fees from Preferred Health. The matter was set for a small claims hearing on September 27, 2006.

On the hearing date, the small claims court entered an order providing in pertinent part as follows:

> Plaintiff and Defendant had a contract for services. It appears that Defendant had consistently paid Plaintiffs the annual $1800.00 billing until this year when Defendant experienced a cash flow problem. Eventually, Defendant terminated services. The contract has no provisions for refund on a prorated basis. The Court is not persuaded that Defendant escapes liability and is due a refund. Rather, Defendant agreed to a service, the cost of which was $1800, and elected to terminate services after sending a partial payment. The remaining payment is due.

(App. 9) Granger now appeals.

Discussion and Decision

A. Standard of Review

The claim was tried before the bench in small claims court. Indiana Small Claims Rule 8(A) provides: "The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence except provisions relating to privileged communications and offers of compromise."

We review for clear error. Flint v. Hopkins, 720 N.E.2d 1230 (Ind. Ct. App. 1999). A judgment is clearly erroneous if the record leaves us with a firm conviction that the trial court has made a mistake and when the record contains no facts or inferences therefrom supporting it. Robinson v. Gazvoda, 783 N.E.2d 1245, 1248 (Ind. Ct. App. 2003), trans. denied. We presume the trial court correctly applied the law. Barber v. Echo Lake Mobile Home Cmty., 759 N.E.2d 253, 255 (Ind. Ct. App. 2001). Additionally, we give due regard to the trial court's opportunity to judge the credibility of the witnesses, and do not reweigh the evidence, but consider only the evidence and reasonable inferences therefrom that support the trial court's judgment. Id. A deferential standard of review is particularly appropriate in small

claims actions, where trials are informal, with the sole objective of dispensing speedy justice according to the rules of substantive law. Id.

B. Analysis

Granger claims that it had a right to cancel Preferred Health's services and cease payments at any time. According to Granger, the right of cancellation is found in the Medical Reimbursement Plan, which includes the following provision: "[T]he Corporation reserves the right to amend or cancel the MRP at any time. Employees will be notified should such amendment or cancellation occur." (App. 15.) In response, Preferred Health contends that the language merely provides that Granger could cancel its group health insurance plan at any time.

Construction of the terms of a written contract is a pure question of law for the court, reviewed de novo. Harrison v. Thomas, 761 N.E.2d 816, 818 (Ind. 2002), trans. denied. The reviewing court looks to the entire contract to glean the intention of the parties at the time the contract was made. Ind. & Mich. Elec. Co. v. Terre Haute Indus., Inc., 507 N.E.2d 588, 598 (Ind. Ct. App. 1987), trans. denied. "In construing a contract, we must adopt the construction which appears to be in accord with justice, common sense and the probable intention of the parties in light of honest and fair dealing. Industry practice or usage is admissible to show the intention of the parties as to those matters not clearly expressed." Id.

The "Employee Reimbursement Plan" sets forth Preferred Health's obligations to Granger and provides that Granger will pay "$1800.00 = $150.00 per month." (Plaintiff's Ex. 1.) During the first four years of their relationship, Granger made an annual payment of $1,800.00 to Preferred Health. When Granger made a partial payment in 2006, it was

accompanied by a request for the acceptance of the partial payment due to Granger's "cash flow problem." (Plaintiff's Ex. 3.) Thus, it is clear that at the time of contracting, the parties did not intend that Granger make monthly installment payments. Nevertheless, Granger claims that its right of cancellation is embodied in the Medical Reimbursement Plan. An examination of this document reveals that it "is intended to provide a plan of payment or partial payment of employees' medical insurance plan" and governs the rights and responsibilities of Granger employees in this regard. (Defendant's Ex. 1.) It appears to be a collateral document, as it does not define the respective contractual obligations and rights of Granger and Preferred Health.

The small claims court did not err as a matter of law by determining that Granger was contractually obligated to pay Preferred Health $1,800.00 annually and owed the unpaid balance for the contract year of mid-2006 to mid-2007.

Affirmed.

SHARPNACK, J., and MAY, J., concur.